

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 27, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSEPH A. PAKOOTAS, an individual
and enrolled member of the Confederated
Tribes of the Colville Reservation; and
DONALD R. MICHEL, an individual and
enrolled member of the Confederated
Tribes of the Colville Reservation; and
THE CONFEDERATED TRIBES OF
THE COLVILLE RESERVATION,
Plaintiffs,
and
THE STATE OF WASHINGTON,
Plaintiff-Intervenor,
v.
TECK COMINCO METALS, LTD., a
Canadian corporation,
Defendant.

No. 2:04-CV-00256-SAB

**ORDER GRANTING JOINT
MOTION AS TO CERTAIN
AFFIRMATIVE DEFENSES**

**ORDER GRANTING JOINT MOTION AS TO CERTAIN
AFFIRMATIVE DEFENSES #1**

1 A motions hearing was held in the above-captioned matter on December 14,
2 2023 in Spokane, Washington. Defendant was represented by Deborah Baum,
3 Amanda Halter, Deanna Willman, and Ashleigh Myers. Plaintiff Pakootas and the
4 Confederated Tribes of the Colville Reservation were represented by Paul Dayton.
5 Intervenor-Plaintiff State of Washington was represented by Joshua Osborne-Klein
6 and Dylan Stonecipher.

7 Pending before the Court was Plaintiffs' Motion for Partial Summary
8 Judgment on Certain Affirmative Defenses, ECF No. 2771, Defendant's Motion
9 for Partial Summary Judgment on Plaintiffs' Joint Natural Resource Damage
10 Claims, ECF No. 2774, and Defendant's Motion for Partial Summary Judgment on
11 the Colville Tribes' "Tribal Service Loss" Claims, ECF No. 2777.

12 At the hearing, the Court heard oral argument on Defendant's two motions
13 for partial summary judgment. The Court took both motions under advisement. As
14 to Plaintiff's motion for partial summary judgment, Defendant indicated that the
15 motion did not need to be argued because Defendant no longer wished to utilize
16 affirmative defenses 10 – 16 in answer to CCT's Fourth Amended Complaint and
17 affirmative defenses 15 – 21 in answer to Washington State's Fifth Amended
18 Complaint. *See* ECF Nos. 2117 and 2569. The Court interpreted this as stipulation
19 and granted Plaintiffs' motion.

20 Accordingly, **IT IS HEREBY ORDERED:**

21 1. Plaintiffs' Motion for Partial Summary Judgment on Certain
22 Affirmative Defenses, ECF No. 2771, is **GRANTED**.

23 2. Affirmative Defenses 10 – 16, listed in ECF No. 2117, are
24 **DISMISSED**.

25 No. 10 – Harm Was Not Caused by Defendant

26 No. 11 – Any Harm Suffered Was Caused by Plaintiff/Third-
27 Parties

28 No. 12 – Disposal and Release not at Same Facility

**ORDER GRANTING JOINT MOTION AS TO CERTAIN
AFFIRMATIVE DEFENSES #2**

No. 13 – Joint and Several Liability Not Permitted

No. 14 – Apportionment

No. 15 – Release Caused by a Third Party

No. 16 – Release Permitted by Law

3. Affirmative Defenses 15 – 21, listed in ECF No. 2569, are
DISMISSED.

No. 15 – Harm Was Not Caused by Defendant

No. 16 – Any Harm Suffered Was Caused by the State/Third
Parties

No. 17 – Disposal and Release Not at Same Facility (CERCLA)

No. 18 – Joint and Several Liability Not Permitted

No. 19 – Liability Proportionate to Apportionment

No. 20 – Release Caused by a Third Party

No. 21 – Release Permitted by Law

IT IS SO ORDERED. The District Court Clerk is hereby directed to enter
this Order and to provide copies to counsel.

DATED this 27th day of December 2023.



A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, written over a horizontal line.

Stanley A. Bastian
Chief United States District Judge